

The county commissioners have nothing to do with the amount of the fee, and have no discretion as to paying it, provided it does not exceed one hundred dollars. *Worcester County v. Melvin*, 89 Md. 40.

See notes to sec. 7.

Appointment of Auditors.

1904, art. 26, sec. 9. 1888, art. 26, sec. 9. 1860, art. 29, sec. 9. 1785, ch. 80, sec. 12. 1888, ch. 447.

9. In all actions brought in any court founded on account, or on which it may be necessary to examine and determine on accounts between the parties, the court may order the accounts and dealings between the parties to be audited and stated by an auditor or auditors to be appointed by such court, and there shall be the same proceedings thereon as in courts of equity upon bills for an account, reserving to the parties, however, the right to a jury trial if demanded.

The proceedings before the auditor must be the same as in actions of account after judgment *quod computet*, is rendered. The defendant may plead; issues may be joined or demurrers may be filed, which must be certified to the court. Issues of fact must be passed upon by the jury, matters of law, by the court. While the auditor may examine the parties, he has no authority to examine other witnesses. This section held to have been misconstrued and misapplied. *Wisner v. Wilhelm*, 48 Md. 10 (decided prior to the act of 1888, ch. 447). See also, *Mantz v. Collins*, 4 H. & McH. 65.

Appointment of Surveyor.

Ibid. sec. 10. 1888, art. 26, sec. 10. 1860, art. 29, sec. 10. 1827, ch. 44, sec. 1. 1900, ch. 581.

10. In any case pending in any court where it is necessary to lay out and locate any lands and where, upon the application of either party to such suit, the court shall be of opinion that the county surveyor is in any manner interested or prejudiced against either of the parties, or is incapacitated by reason of ill-health or from any other cause to perform his official duties in connection with the case then pending, or if either of the parties shall make oath that he believes the county surveyor is interested or prejudiced, or otherwise by affidavit satisfy the court that the county surveyor is not a suitable person to lay out and locate the lands in dispute, the court may appoint some competent person to lay out, locate or survey said lands and plat the same.

See art. 91, "Surveyor," etc.

Ibid. sec. 11. 1888, art. 26, sec. 11. 1860, art. 29, sec. 11. 1827, ch. 44, sec. 2.

11. The person so appointed, before he proceeds to act, shall take an oath before some justice of the peace that he will faithfully, without favor, affection or prejudice, perform the service for which he was appointed by the court; which oath shall be certified by the justice and shall accompany such return as the surveyor shall make to the court in the case.

Ibid. sec. 12. 1888, art. 26, sec. 12. 1860, art. 29, sec. 12. 1827, ch. 44, sec. 1.

12. The person so appointed shall receive such fees as are allowed by law to the county surveyor for like services.

See art. 36, sec. 30.